IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23135 of 2004

Between:

Ch.Yallamandaiah S/o.Venkatadri
Girijan Cooperative Corporation Ltd., Visakhapatnam and R/o.MIG-203/4, M.V.P. Colony

..... PETITIONER

AND

1 The Vice Chairman and Managing Director, Girijan Cooperative Corporation Ltd., Visakhapatnam.
2 Special Grade Deputy Collector/Vigilance Officer Cum-Enquiry Officer, Girijan Coop. Corporation Ltd., Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of writ of Mandamus declaring the action of the 1st respondent in inflicting the punishment of Compulsory Retirement from GCC Service besides recovery of Rs.6,71,964.00 from out of the terminal benefits and the petitioner in his Proceedings Rc.No.1409/99 Admn. I dated 17.11.2004 as illegal, arbitrary, opposed to the Principles of natural justice and offending Art 14,16 and 21 of the Constitution of India and consequentially to direct the 1st respondents to continue the petitioner in the cadre of General Manager in BCC Service.

Counsel for the Petitioner: MR.M.R.K.CHOWDARY, Senior Counsel for Mr.M.Sudheer Kumar

Counsel for the Respondents: MR.N.SRIDHAR REDDY

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the 1st respondent in inflicting the punishment of compulsory retirement from G.C.C Service besides recovery of Rs.6,71,964/- from the terminal benefits of the petitioner vide Proceedings Rc.No.1409/99 Admn.I, dated 17.11.2004 as illegal, arbitrary and in violation of principles of natural justice.

The brief facts that are necessary for the disposal of the writ petition are as follows:

The petitioner was appointed as Senior Manager in the Girijan Corporative Corporation Limited (for short "GCC") on 6.5.1977. In the year 1985 he was promoted to the cadre of Divisional Manager and in August, 1992, he was further promoted to the cadre of General Manager and he has been working as such till the issuance of the impugned proceedings. While he was working as General Manager (Marketing) a Charge Memo, dated 30.7.1999 containing 10 charges was served on him. Out of 10 charges, 9 charges were relating to the irregularities committed by him during the year 1997-98. As per the Charge Memo, ITDA/Executive Director, GCC was shown to have been the Enquiry Officer and he was required to explain the reasons for the alleged irregularities and to submit the explanation to the Enquiry Officer. Thereafter, by the proceedings dated 25.1.2001, the Enquiry Officer was changed and the Vigilance Officer GCC Ltd., was appointed as Enquiry Officer. In the same proceedings, the Joint Registrar/Officer on Special Duty (Enquiries), CHO, GCC Ltd. was appointed as Presenting Officer. The petitioner submitted a detailed explanation to the Charge Memo on 23.3.2001 denying the charges leveled against him. The Enquiry Officer issued a notice requiring him

to attend the regular enquiry to be conducted. Though he appeared as required by the Enquiry Officer, no enquiry was conducted. No witnesses were examined and no documents were marked on behalf of the Corporation. The Presenting Officer neither produced any witnesses nor chose to produce any documentary evidence to substantiate the charges. Even his statement was also not recorded by the Enquiry Officer though it is mandatory under the service rules. On the other hand, the 2nd respondent placed reliance on some extraneous material like Audit Report, Preliminary Enquiry Report and certain other documents referred to in the Enquiry Officer's report though he was not afforded any opportunity to explain against such material. Though no enquiry was conducted, it appears that the Enquiry Officer submitted a report on 12.8.2002 to the respondents. Having received the report from the Enquiry Officer, the respondents considered and accepted the same and came to a provisional conclusion to compulsory retire the petitioner from the Corporation without any prejudice to take action for recovery of proportionate loss of Rs.19,22,371.98 alleged to be the loss sustained by the Corporation during the period from 1995-96 to 1998-99. However, he was required only to explain as to why the punishment of "compulsory retirement" from service should not be imposed. The scope of the enquiry was enlarged by focusing the attention of the irregularities presumed to have been committed during the previous years i.e. 1995-96 and 1996-97. Though the charges leveled against the petitioner were relating to only one year namely 1997-98, the Enquiry Officer enlarged the scope of enquiry without any notice to him. The Enquiry Officer has no authority to expand the scope of the enquiry. For the Provisional Conclusion Order, dated 31.3.2003, the petitioner submitted a detailed explanation dated 9.7.2003 and requested for personal hearing before taking final decision. He requested the respondents to call certain officers for cross-examination in view of the fact that the enquiry in this case is based on assumptions and suspicion. However, his request was negatived. Thereafter, he submitted a detailed representation during the course of personal hearing on 27.9.2004. Ultimately, the impugned

proceedings have been issued imposing the punishment of compulsory retirement from GCC Service while directing recovery of Rs.6,71,964/- relating to the year 1997-98 from his terminal benefits. All the nine charges that were held proved against him are the findings based on no evidence. The charge is one thing and the finding is something else. A detailed explanation relating to each charge was given in this writ petition. It is not necessary to reproduce the same. The grievance of the petitioner is that the preliminary enquiry report and the special report of the Joint Registrar/Audit Officer were not furnished to him along with charge sheet. The Enquiry Officer's report is not in conformity with the procedure prescribed by the authorities to be followed in the enquiry. Several other contentions were raised in this writ petition and they are not necessary for disposal of the writ petition.

The respondents filed a detailed counter stating that final orders were passed after several opportunities were given in one or the other mode. The petitioner has preferred several applications at various stages of disciplinary proceedings that were considered in true spirit; and he was given exhaustive opportunity to defence his case. The explanation offered to the Charge memo and further explanation offered to the Provisional Conclusion orders were considered while final orders were passed. Further, the petitioner was given opportunity of personal hearing. His request for cross-examination of certain officers was rejected since the matter was at the stage of passing final orders. The account of facts reveals how the petitioner was afforded with several opportunities to defend his case in the course of the disciplinary proceedings, which reveal that there was no violation of principles of natural justice. The allegation with regard to the appointment of Enquiry Officer and the report of the Enquiry Officer is untenable and not in accordance with law, because a State Gazetted Officer from the Revenue Department in the cadre of Special Grade Deputy Collector who was deputed to discharge function as Vigilance Officer was appointed as Enquiry Officer by the Vice Chairman & Managing Director, a competent authority duly

exercising the powers conferred on him by the Rule 2 of Appendix-E of the Service Rules of the Employees of GCC. The 2nd respondent conducted a detailed enquiry, examined witnesses and followed the procedure prescribed and thereafter only she came to the conclusion that all the charges framed against the petitioner were proved. The allegation that no opportunity was afforded to the petitioner to cross examine any other witness for the purpose of proving the documents relied upon by the 2nd respondent is baseless. Several opportunities were given to the petitioner but he has not availed himself of the opportunity to cross-examine any witnesses. The enquiry report is prepared totally in accordance with the procedure prescribed in Appendix-E of Rule 5 of the Service Rules. Because of preoccupation of the Project Officer with other official duties of the Corporation, enquiry could not be continued further. Hence, the Vigilance Officer of the Corporation was appointed as Enquiry Officer. In the Charge Memo, dated 30.7.99 itself it was intimated that an Enquiry Officer was appointed to conduct disciplinary enquiry against the petitioner. The allegation that no enquiry was conducted and no documents were marked on behalf of the Corporation in support of the charges leveled against the petitioner is false. The 2nd respondent conducted detailed enquiry after affording an opportunity to the petitioner after examining the witnesses and after marking the documents. It is true that the charges leveled against the petitioner relate to the year 1997-98. Though the Enquiry Officer verified the facts relating to the years 1995-96 and 1996-97, the responsibility was finally fixed to the charges held proved pertaining to the year 1997-98 only. The petitioner filed detailed objections dated 9.7.2003 wherein he never appealed that the 2nd respondent did not conduct any enquiry and that he suffered prejudice by changing the scope of the enquiry. The petitioner furnished the preliminary enquiry report and the audit report along with the charge sheet and acknowledged the same. The enquiry Officer has followed the principles of natural justice. The Enquiry officer, after considering the oral and documentary evidence has come to the conclusion that the charges

framed against the petitioner were held proved. No prejudice is caused to the petitioner in the hands of the respondents because a reasonable opportunity was given. The Enquiry Officer is competent to hold enquiry. The statements recorded during the preliminary enquiry were furnished to the petitioner along with the Charge Memo dated 12.8.1999. The petitioner was given an opportunity to prefer an appeal within 30 days against the impugned order, but he did not avail the same. Though the term of office of the Board of Directors was expired, it did not prevent the petitioner from preferring his appeal, which will be placed before the new Board as constituted by the Government of A.P. The Government of A.P. vide G.O.Ms.No.6 SW (GCC 2) Dept., dated 22.1.2005 appointed the Chairman and other members of the Board.

Heard the arguments of the learned counsel for both the parties at length and perused the material on record.

Sri M.R.K. Chowdary, learned senior counsel for the petitioner has vehemently contended that the enquiry was conducted in total violation of principles of natural justice. There was no fair play. No opportunity was given to the writ petitioner to cross-examine the witnesses in the departmental enquiry. The list of witnesses and documents are not appended to the Charge Memo and the date of examination of witnesses is not known to the petitioner and behind his back, an enquiry was conducted. It is not known to the departmental proceedings that the defence witnesses were examined in the first instance and that the enquiry officer exceeded the scope of enquiry. Though the specific charges relating to certain irregularities pertaining to the year 1997-98 are said to have been committed by the writ petitioner, the Enquiry Officer exceeds the jurisdiction. Therefore, it is a case where principles of natural justice have been violated and hence, the proceedings are liable to be set aside. He relied upon several decisions which will be referred to at the appropriate time of discussion.

Sri N. Sridhar Reddy, learned counsel for the respondents has contended that it is not a case of violation of principles of natural justice; and several opportunities were given to the writ petitioner to defend his case; and the dates of hearing were informed well in advance, but the petitioner failed to attend the enquiry; and after a lapse of one year and at the time of show cause notice for the proposed punishment, he made a request to cross-examine the witness which was rejected rightly; and the disciplinary authority has taken into account only the charges relating to the year 1997-98 and passed appropriate orders and in the same enquiry, some other persons preferred appeal to the Board which are pending and at the time of passing the order, no appellate authority is constituted, but now the appellate authority is constituted and hence, the petitioner has to avail alternative remedy and there are no grounds to interfere with the impugned proceedings.

The Disciplinary Punishments and Appeal Rules govern the disciplinary matters in respect of the employees of the Girijan Cooperative Corporation. In Appendix-E of these Rules, certain procedure is prescribed to be followed in inflicting punishments. As per Rule-2, it is the fundamental principal of natural justice that the officer selected to make an enquiry should be a person with open minded and not one who is against the delinquent or one who has prejudged the issue. Without being appointed as Enquiry Officer or authorized to hold the enquiry by the authority competent to impose the penalty or by a higher authority, one cannot hold the enquiry merely because he is an officer superior to the accused officer. The competent authority or any higher authority can conduct the enquiry.

Paragraph 5 of the Appendix-E deals with “request for an oral enquiry and/or to be heard in presence”.

a. *If within the prescribed time or such further time as the Enquiry Officer may give, no written statement in defence is filled and no request, in writing, is made for oral enquiry or for being heard in person or if the delinquent officer absents himself without sufficient reason to attend the enquiry of the date fixed, it is*

always better that the enquiring officer proceeds with the enquiry exparte to satisfy himself about the truth of the charges. An enquiry must necessarily be held where the employee asks for it or has expressed a desire to be heard in person, or having regard to the written statement in defence, or the statement made by the employee himself when he is heard in person, a further enquiry is necessary to decide the truth of the charges.

b. *The enquiry officer shall examine the delinquent orally, if he desires to be heard in person. The delinquent should not be compelled to be a witness against himself.*

Paragraph 6 deals with recording of evidence:-

a. *At the oral enquiry, evidence should be heard on charges which are not admitted. The enquiry, however should not extent to matters not mentioned in the charge sheet.*

b. *The evidence in support of the charges should be recorded first and the accused employee given an opportunity to cross-examine the witnesses.*

c. *The evidence of each witness should be recorded in the form of a narrative and when the evidence is completed, it should be read over to the witness, and if necessary, explained to him in the language in which it was given.*

The above rules, governing the service conditions of the petitioner make clear that the enquiry should not extent the matters not mentioned in the charge sheet. Secondly, the evidence in support of the charges should be recorded first and the accused employee shall be given an opportunity to cross-examine the witness.

These rules also provide that an employee shall have a right of appeal against an order passed by the superior authority which injuriously affects his interests. An appeal shall be preferred from the date of receipt of an order. At the relevant point of time, the appellate authority is constituted but admittedly, the Government of A.P. constituted the Chairman and other Members of the Board as an

appellate authority of Board in G.O.Ms. No.6 SW (GCC 2), Dept., dated 22.1.2005. There cannot be an dispute that availability of alternative remedy is not a bar for exercising the jurisdiction of this Court when there is a violation of fundamental right or when there is a failure of principles of natural justice or when the proceedings are only without jurisdiction. These aspects of the case have been pointed out in a decision reported in **HARBANSLAL SAHNIA Vs. INDIAN OIL CORPN. LTD.** wherein it is held as follows:

> *"So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged (See Whirlpool Corpn. V. Registrar of Trade Marks)."*

To the same effect, there is another decision reported in **WHIRLPOOL CORPN. Vs. REGISTRAR OF TRADE MARKS** wherein it is held as under:

> *"The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
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> *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has*

been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field".

So, from the above decisions it is clear that the jurisdiction of the High Court in entertaining the writ petition under Article 226 of the Constitution of India in spite of alternative statutory remedies is not affected al least in three conditions as enumerated therein. It is not a case where the writ petition is filed for enforcement of any of the fundamental rights. It is also not a case where the authority against whom the writ petition is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. Therefore, what has to be seen in this writ petition is whether the principles of natural justice are violated or not. The Vice-Chairman and Managing Director, by his Proceedings, dated 30.7.1999 framed as many as 10 charges. All the charges relating to certain irregularities said to have been committed by the petitioner during 1997-98 except charge No.9. Charge No.9 was not pressed by the disciplinary authority. The Charge Memo indicates that the preliminary enquiry report Rc.10/99/GCC/CC, dated 12.5.99 submitted by the Project Officer, ITDA, Seethampeta is enclosed for the petitioner. As per the Proceedings, dated 25.1.2001, the case was entrusted to the Vigilance Officer, Visakhapatnam with a direction to conduct full-fledged enquiry into the whole affair with reference to the charges framed and send a report. The petitioner gave a detailed explanation dated 27.3.2001. The Enquiry Officer conducted enquiry and submitted a report to the disciplinary authority on 12.8.2002. As seen from the enquiry report, though the charges framed against the petitioner were related to the year 1997-98, the Enquiry Officer exceeded his jurisdiction in conducting the enquiry with regard to those charges. Whether such procedure followed by the Enquiry Officer is in violation of the Rules or not has to be looked

into. As per the Rules in Paragraph 6(a) of Appendix-E, the Enquiry Officer should not extend the matters not mentioned in the charge sheet. Whether such extension is made to the root of the case so as to set aside the findings of the enquiry officer has also to be decided. In my considered opinion, the Enquiry Officer is only exceeding the jurisdiction which will not vitiate the entire departmental proceedings in view the fact that the disciplinary authority having noted the charges relating to the year 1997-98 season only had passed the impugned order. The relevant paragraph in the impugned proceedings would read as follows:

> *"Therefore, Sri Ch.Yellamandaiah, General Manager (Mktg.) (on leave), GCC Visakhapatnam is hereby inflicted with the punishment of COMPULSORY RETIREMENT from GCC Service. Recovery of loss ofRs.6,71,964/- relating to 1997-98 is only a concomitants of the charges held established without prejudice to initiate action for losses relating to the previous and subsequent years."*

Therefore, the Enquiry Officer has taken into consideration only the alleged illegalities committed by the petitioner relating to the charge for the year 1997-98 only. So, under these circumstances, though the Enquiry Officer exceeded in conducting the enquiry beyond the scope of the enquiry, but that does not vitiate the proceedings.

With regard to the violation of principles of natural justice, the learned counsel for the petitioner has relied upon a catena of decisions with regard to the reasonable opportunity to be given to the delinquent for cross examining the witnesses.

In a decision reported in **TOWN AREA COMMITTEE Vs. JAGDISH PRASAD** the Apex Court held to the following effect:

> *"A reasonable opportunity is a term of well known legal significance and includes an opportunity given to the employee to cross examine the witnesses examined against him and to lead defence in support of his version."*

In another decision reported in **STATE OF PUNJAB Vs. DEWAN**

CHUNI LAL it is held thus:

> *"In our view the High Court arrived at the correct conclusion and on the facts of this case, it is impossible to hold that the respondent had been given reasonable opportunity of conducting his defence before the enquiry officer. From what we have stated, it is clear that if the enquiry officer had summoned at least those witnesses who were available and who could have thrown some light on the reports made against the respondent the report might well have been different. We cannot also lose sight of the fact that charges based on the reports for the years 1941 and 1942 should not have been leveled against the respondent."*

In another decision reported in **R.C. SHARMA Vs. UNIONOF INDIA** it is observed as under:

> *"The question whether the appellant was given a reasonable opportunity to lead evidence and to be heard or not is largely a question of fact. It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it could vitiate the whole departmental trial. Prejudice to the Government servant resulting from an alleged violation of a rule must be proved."*

In another decision reported in **SAWAI SINGH Vs. STATE OF RAJASTHAN** the Apex Court recorded the following findings:

> *"But a departmental enquiry entailing consequences like loss of job which now a days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigation to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation."*

In yet another decision reported in **KHEM CHAND Vs. UNION OF INDIA** it is observed thus:

> *"To summarise: the reasonable opportunity envisaged by the provision under consideration includes:*
>
> a. *An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;*

b. *An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally*

c. *An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.*

In some other decision reported in **B. PATNAIK Vs. STATE OF ORISSA** it is held as follows:

> *"Admittedly, in the present case there was no enquiry after the denial of the charges. The appointing authority says that though opportunity was given to the delinquent he did not defend himself. In fact, no opportunity was given. A date should have been fixed calling upon the petitioner to cross-examine the witnesses and to make comments upon the documents presented on behalf of the appointing authority. No such date was fixed and it cannot therefore be said that the delinquent did not avail of the opportunity though given".*

In another decision reported in **THE STATE OF PUNJAB Vs. BHAGAT RAM** it is held as under:

> *"The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.*
>
> *It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and*

produced at the inquiry in support of the charges leveled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken."

In another decision reported in **K. VENKATESWARLU Vs. NAGARJUNA GRAMEENA BANK & ANOTHER,** it is observed thus:

"What emerges from these two decisions of the Supreme Court is that if the employee admits his guilt, to insist upon the disciplinary authority to let in evidence about the allegations will only be an empty formality and in such a case it is open to the disciplinary authority to examine the delinquent official himself, even in the first place, so as to enable him to offer any explanation for his conduct, if any or to place before the disciplinary authority any circumstances which will go to mitigate the gravity of the misconduct."

From the above decisions, it is clear that a reasonable opportunity should be given to the charged officer to cross-examine the witnesses examined on behalf of the department. The charged officer has right to cross-examine the witnesses. It is not an empty formality. If no opportunity is given to the petitioner to cross-examine the witnesses, the principles of natural justice have been violated. In this case, the learned counsel for the petitioner pointed out that on 2.7.2001, about 10 witnesses were examined before the Enquiry Officer and on that day, no notice was given to the petitioner proposing to conduct enquiry or to examine the witnesses. In his absence, the statements of witnesses were recorded and the petitioner did not know about the examination of those witnesses. Therefore, he did not request the Enquiry Officer to permit him to cross-examine them and after coming to know through the show cause notice, he made a request to the disciplinary authority to recall those witnesses for the purpose of cross-examination.

On the other hand, it is contended by the learned counsel for the respondents that the petitioner was given exhaustive opportunity to defend his case and he was informed to present on 2.7.2001 for further proceedings but he did not attend the enquiry on 2.7.2001 and

therefore, the principles of natural justice have not been violated. On this aspect, it is pertinent to refer to the decision reported in **KAMINI KUMAR DAS CHOUDURY Vs. STATE OF WEST BENGAL AND OTHERS** wherein it is held as follows:

> *"the questions whether there was bias, ill-will, mala fides, or a due opportunity to be heard or to produce evidence given in the court of a departmental proceedings, are so largely questions of fact that it is difficult to decide them merely on conflicting assertions made by affidavits given by the two sides."*

Even in the case of ***R.C.Sharma Vs. Union of India (supra 5)***, the question whether the appellant was given a reasonable opportunity to lead evidence and to be heard or not is largely a question of fact. The case of the petitioner is that no opportunity was afforded to cross-examine any of the witnesses for the purpose of proving the documents and no witnesses were examined in his presence whereas, it is stated in the counter that the allegation that no opportunity was given to the petitioner to cross-examine any of the witnesses for the purpose of proving the documents relied upon by the 2nd respondent is baseless and that several opportunities were given to him, but he did not avail himself of those opportunities to cross-examine any witness. Therefore, in these circumstances it is not desirable to give a finding that the principles of natural justice have been violated. The petitioner failed to show *prima facie* that the Enquiry Officer has not followed the principles of natural justice in conducting the enquiry. So also the question whether a copy of the preliminary enquiry report or the statements of witnesses recorded during the preliminary enquiry report or the audit report were supplied to him or not is also a question of fact which has to be decided by the appellate authority. In what manner the prejudice has been caused to him is required to be proved and established by the delinquent.

It is also stated that the competent authority to hold an enquiry is only the Vice Chairman & Managing Director who is the 1st respondent herein and therefore, the Vigilance Officer of the G.C.C. is not competent to enquire into the matter. As per the Proceedings, dated

25.1.2001, the Vice Chairman and Managing Director appointed the Vigilance Officer Smt.P.Usha Kumari to enquire into the irregularities as per charge sheet. Clause 2 of the Appendix-E shows that the competent authority or any higher authority can appoint any officer as an Enquiry Officer. Therefore, it is not a case where the Vigilance Officer has no power to conduct enquiry nor is it a case that the enquiry conducted was without jurisdiction. The Rules contemplate that the competent authority can appoint an Enquiry Officer in the cadre of any Officer. The enquiry is conducted not only against the petitioner but also the Deputy General Manager (Marketing) and other staff. It is brought to the notice of this Court that in pursuance of the enquiry report submitted by the Enquiry Officer some of the employees were imposed punishment and they preferred an appeal to the Board of Directors. Admittedly, as on the date of passing the impugned order, there is no appellate authority since the term of the appellate authority as well as the term of office of the Board of Directors has come to an end by 31.1.2004, and no Board is constituted till the date of filing the petition. Admittedly, the Board of Directors has to exercise the power of appellate authority against the punishment imposed by the punishing authority who is the 1st respondent. Now the Government constituted the Board of Directors of G.C.C., as per G.O.Ms.No.6 SW(GCC 2) Dept., dated 22.1.2005 and therefore, there is no impediment for the petitioner to file an appeal before the Board of Directors which is the statutory appellate authority that can look into all the contentions raised in the writ petition.

For the aforesaid reasons, the writ petition is disposed of with a direction to the petitioner to file a statutory appeal before the appellate authority. Since the time for preferring an appeal is lapsed and the petitioner is prosecuting the case before this court, the time spent in the proceedings shall have to be duly condoned by the appellate authority. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

2nd March, 2005.

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To

1 The Vice Chairman and Managing Director Girijan Cooperative Corporation Ltd., Visakhapatnam.
2 Special Grade Deputy Collector/Vigilance Officer Cum-Enquiry Officer, Girijan Coop. Corporation Ltd., Visakhapatnam.

3 Two C.D. copies.